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# RHB Bank Bhd v First Omni Sdn Bhd & Anor

B HIGH COURT (KOTA KINABALU) — SUIT NO BKI-22NCvC-130–12 OF 2017
WONG SIONG TUNG JC
30 APRIL 2020

C *Banking — Security for advances — Corporate guarantee — Whether the plaintiff was bound by the scheme of arrangement and provisions therein — Whether corporate guarantees remained valid and enforceable*

D *Civil Procedure — Notice of application — Whether issues were suitable for determination without the full trial of the action — Whether determination of such issues would finally determine the entire cause or matter — Rules of Court 2012 O 14A*

E This was in relation to the second defendant's application made under O 14A of the Rules of Court 2012. The plaintiff was a licensed bank in Malaysia. In 2001, the plaintiff granted various banking facilities totaling RM2.2m to the first defendant a company with a registered and business address in Kota Kinabalu, Sabah. The facilities were extended and restructured several times
F over the years and thereafter by several letters of offer of the plaintiff, the last of which was dated 30 September 2008 which was accepted by the first defendant. The second defendant, a company incorporated in the Republic of Singapore, had given three corporate guarantees to the plaintiff in respect of the banking facilities. In the later part of 2008, the second defendant faced
G financial difficulties and filed an application to the High Court of the Republic of Singapore and obtained an order to call for a meeting of its creditors to propose a scheme of arrangement to compromise or settle the debts of the second defendant. Such meetings were called, and a scheme was approved by majority of the second defendant's creditors and such scheme was also
H approved by the High Court of the Republic of Singapore with an effective date of 19 April 2010. Under the scheme of arrangement, any contingent claim of the second defendant which had not become legally valid and binding and actually due from the second defendant by the fifth anniversary of the effective date, the relevant contingent creditor shall be deemed to be irrevocably,
I unconditionally and permanently waive its rights to claim any amount from the second defendant. The plaintiff claimed that the first defendant had defaulted in making repayments of the banking facilities in October 2017. The plaintiff had commenced the action herein against the first defendant for the sum owing and against the second defendant under the corporate guarantees

given by the second defendant. The plaintiff pleaded that by the assurance given by the second defendant in its letter dated 31 May 2017 that the corporate guarantees given were valid and binding notwithstanding the scheme of arrangement, the plaintiff had not demanded for further and better security of the debt under the banking facilities. The second defendant pleaded that as its defence the plaintiff had not crystalised the contingent claim under the said corporate guarantee given by the second defendant within the fifth anniversary of the effective date and that the plaintiff is deemed to have waived its rights to claim any amounts under the corporate guarantee. The following were the issues to be determined in this application: (a) whether the plaintiff was bound by the scheme of arrangement and provisions therein; and (b) whether there was representation by the second defendant that notwithstanding the scheme of arrangement, the corporate guarantees remained valid and enforceable which the plaintiff has acted to its detriment that the second defendant should be held to the representation.

**Held**, dismissing the application with costs of RM2,000 subject to allocator fee:

(1) It was not a requirement that the determination should dispose of the whole case. It was sufficient if it would dispose of the major part of the case or the dominant issue in the case. The mere fact that the case appeared to be or complicated was no justification not to consider the application (see para 23).

(2) The proper law of contract in respect of these corporate guarantee given by the second defendant to the plaintiff is the law of Malaysia. The liabilities and debts arising thereunder cannot be discharged by laws of the Republic of Singapore. It seemed that the second defendant's liability to the plaintiff under the corporate guarantees given here in respect of the banking facilities cannot be discharged by the scheme of arrangement in the Republic of Singapore (see paras 32 & 37).

(3) Though the plaintiff filed its proofs of debt with the scheme manager, but the proof was rejected. The plaintiff had never voted or got the chance to vote in the meeting of the creditors of the creditors of the second defendant in Singapore for the scheme of arrangement. No evidence clearly established the fact of an offer made by the second defendant, acceptance by the plaintiff of such offer and consideration as required under the Contracts Act 1950 to give rise to an enforceable agreement or contract that the plaintiff should be bound by the scheme of arrangement (see paras 38–39).

**[Bahasa Malaysia summary**

Ini adalah berkaitan dengan permohonan defendan kedua yang dibuat di bawah A 14A Kaedah-Kaedah Mahkamah 2012. Plaintif merupakan seorang

bank berlesen di Malaysia. Pada tahun 2001, plaintif telah memberikan beberapa fasiliti perbankan berjumlah RM2.2 juta kepada defendan pertama, yang merupakan satu syarikat yang mempunyai alamat berdaftar dan perniagaan di Kota Kinabalu, Sabah. Fasiliti yang diberikan telah dilanjutkan dan disusun semula beberapa kali dan selepas beberapa surat tawaran oleh plaintif, yang terakhir adalah pada 30 September 2008 yang telah diterima oleh defendan pertama. Defendan kedua, merupakan satu syarikat yang ditubuhkan di Republik Singapura, telah memberikan tiga jaminan korporat kepada plaintif berkaitan dengan fasiliti perbankan. Pada lewat tahun 2008, defendan kedua telah menghadapi masalah keewangan dan memfailkan satu permohonan di Mahkamah Tinggi Republik Singapura dan telah mendapatkan satu perintah untuk memanggil satu mesyuarat pemiutangnya dan untuk mencadangkan satu skim persetujuan untuk menyelesaikan hutang defendan kedua. Mesyuarat tersebut telah dipanggil dan satu skim telah diluluskan dengan majoriti pemiutang defendan kedua dan skim tersebut telah diluluskan oleh Mahkamah Tinggi Republik Singapura dengan tarikh kuat kuasa pada 19 April 2010. Di bawah skim aturan tersebut, apa-apa tuntutan kontinjen terhadap defendan kedua yang belum sah disisi undang-undang dan terhutang dari defendan kedua menjelang tarikh ulang tahun kelima tarikh kuat kuasa, pemiutang kontinjen berkenaan dianggap telah tanpa syarat, dengan tetap dan tidak dapat dibatalkan menolak haknya untuk membuat apa-apa tuntutan dari defendan kedua. Plaintif mengatakan bahawa defendan pertama telah gagal untuk membuat pembayaran fasiliti perbankan pada Oktober 2017. Plaintif telah memulakan tindakan di sini terhadap defendan pertama untuk jumlah terhutang dan defendan kedua di bawah jaminan korporat yang diberikan oleh defendan kedua. Plaintif telah memplidkan bahawa jaminan yang diberikan oleh defendan kedua dalam suratnya bertarikh 31 Mei 2017 bahawa jaminan korporat yang diberikan adalah sah dan mengikat tanpa mengambil kira skim aturan tersebut, plaintif tidak menuntut untuk cagaran lanjut untuk fasiliti perbankan tersebut. Defendan kedua memplidkan sebagai pembelaannya bahawa plaintiff tidak terwujud satu tuntutan kontinjen di bawah jaminan korporat yang diberikan oleh defendan kedua tersebut dalam tempoh ulang tahun kelima tarikh kuat kuasa dan oleh itu plaintif dianggap telah mengenepikan haknya untuk menuntut apa-apa jumlah di bawah jaminan korporat tersebut. Isu untuk ditentukan dalam permohonan ini adalah: (a) sama ada plaintif terikat dengan skim aturan dan peruntukannya; dan (b) sama ada representasi oleh defendan kedua, tanpa mengambil kira skim aturan tersebut, jaminan korporat tersebut masih sah dan boleh dikuatkuasakan yang mana plaintif telah membuat tindakan yang menjejaskannya dan defendan kedua harus berpegang kepada representasi tersebut.

**Diputuskan**, menolak permohonan dengan kos RM2,000 tertakluk kepada fi alokatur:

(1) Ianya bukan satu keperluan bahawa keputusan harus melupuskan seluruh kes. Ianya adalah memadai jika ianya boleh melupuskan sejumlah besar kes atau isu utama dalam kes. Fakta bahawa kes kelihatan rumit bukan satu alasan untuk tidak menimbangkan permohonan (lihat perenggan 23).

(2) Undang-undang kontrak berkaitan dengan jaminan korporat yang diberikan kepada plaintif oleh defendan kedua adalah di bawah undang-undang Malaysia. Liabiliti dan hutang yang timbul daripadanya tidak boleh dilepaskan oleh undang-undang Republik Singapura. Ianya kelihatan seperti liabiliti defendan kedua kepada plaintif di bawah jaminan korporat yang diberikan berkaitan dengan fasiliti perbankan tidak boleh dilepaskan oleh skim aturan di Republik Singapura (lihat perenggan 32 & 37).

(3) Walaupun plaintif telah memfailkan bukti hutangnya kepada pengurus skim, namun bukti tersebut telah ditolak. Plaintif tidak pernah mengundi atau diberi peluang untuk mengundi dalam mesyuarat pemiutang defendan kedua di Singapura berkaitan dengan skim aturan tersebut. Tiada keterangan dengan jelas menunjukan fakta bahawa satu tawaran telah dibuat oleh defendan kedua, penerimaan oleh plaintif atas tawaran tersebut dan balasan yang diperlukan di bawah Akta Kontrak 1950 untuk menimbulkan satu persetujuan yang boleh dikuatkuasakan dan plaintif harus terikat dengan skim aturan tersebut (lihat perenggan 38–39).]

**Cases referred to**

*Antony Gibbs & Sons v LA Societe Industrielle Et Commerciale Des Metaux* (1890) 25 QBD 399, CA (refd)

*Bond Corporation Holdings Ltd v Western Australia (No 2)* (1992) 10 ACLC 715; (1992) 7 WAR 61 (refd)

*Dato' Sivananthan a/l Shanmugam v Artisan Fokus Sdn Bhd* [2016] 3 MLJ 122; [2015] 2 CLJ 1062, CA (refd)

*Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo* [2011] 2 BCLC 275, QBD (refd)

*Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31, FC (refd)

*National Bank of Greece and Athens SA v Metliss* [1957] 3 All ER 608, HL (refd)

*New Zealand Loan and Mercantile Agency Co v Morrison* [1898] AC 349, PC (refd)

*Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8, CA (refd)

**Legislation referred to**

Contracts Act 1950
Joint Stock Companies Arrangement Act 1870 [UK]
Rules of Court 2012 O 14A

*Christopher Chong (Lind Willie Wong & Chin) for the plaintiff.*
*S Vanugopal (S Vanugopal & Partners) for the defendant.*

**Wong Siong Tung JC:**

**[1]** This is my ruling in respect of the second defendant's notice of application dated 27 March 2019 (encl 63) made under O 14A of the Rules of Court 2012.

BRIEF BACKGROUND FACTS

**[2]** The plaintiff is a licensed bank in Malaysia. In 2001, the plaintiff granted various banking facilities comprises of overdraft, letter of credit/trust receipt/bankers' acceptance/shipping guarantee totalling RM2.2m to the first defendant, a company having a registered and business address in Kota Kinabalu, Sabah.

**[3]** The banking facilities were extended and restructured several times over the years thereafter by several letters of offer of the plaintiff with the last letter of offer dated 30 September 2008 which were accepted by the first defendant.

**[4]** The second defendant, a company in the Republic of Singapore has given three corporate guarantees to the plaintiff in respect of the banking facilities.

**[5]** In later part of 2008, the second defendant faced financial difficulties. The second defendant filed an application in the High Court of the Republic of Singapore and obtained an order to call for a meeting of its creditors to propose a scheme of arrangement to compromise or settle the debts of the second defendant.

**[6]** It seems that such meetings were called, a scheme was approved by the majority of the second defendant's creditors and such scheme was also approved by the High Court of the Republic of Singapore on 15 March 2010 and with an effective date on 19 April 2010.

**[7]** It seems also that the scheme is binding on all creditors of the second defendant by virtue of the Companies Law of the Republic of Singapore.

**[8]** Under the scheme of arrangement (by cl 6.5.2), any contingent claim which is, any potential liability of the second defendant that has not become legally valid and binding and actually due from the second defendant by the fifth anniversary of the effective date (ie by 19 April 2015), the relevant contingent creditor shall be deemed to irrevocably, unconditionally and permanently waive its rights to claim any amount for the second defendant.

THE NATURE OF THE CLAIM AND DEFENCE

**[9]** However, the plaintiff claimed that the first defendant has defaulted in making repayment of the banking facilities in October 2017.

**[10]** On 19 December 2017, the plaintiff commenced the action herein against the first defendant for the sum of RM1,262,950.01 owing as at 29 October 2017 and also against the second defendant under the corporate guarantees given by the second defendant.

**[11]** In anticipation of the defence of the defendant based on the scheme of arrangement, the plaintiff pleaded that by the assurance given by the second defendant in its letter dated 31 May 2017 that the corporate guarantees given were legally valid and binding notwithstanding the scheme of arrangement, the plaintiff has not demanded for further and better security for the debt under the banking facilities.

**[12]** The defendant denied that such assurance was given. The defendant asserted that the plaintiff has wanted a fresh corporate guarantee to be given in view of the scheme of arrangement and the new form of corporate guarantee were not given by the second defendant.

**[13]** Relying on the terms of the scheme of arrangement, the second defendant pleaded as its defence that the plaintiff has not crystalised the contingent claim under the said corporate guarantee given by the second defendant within the fifth anniversary of the effective date (ie by 19 April 2015). The second defendant claimed that the plaintiff is deemed to have waived its rights to claim any amounts under the corporate guarantee given by the second defendant.

**[14]** The second defendant also pleaded that the plaintiff has elected to be bound by the terms of the scheme of arrangement by its proof of debt submitted on 17 August 2018 which was rejected by the scheme manager in the scheme of arrangement. The plaintiff has also requested and granted by the scheme manager, several extension of time to submit dispute notice and appointment of independent assessor which the plaintiff did not do so.

**[15]** The plaintiff denied that that it has elected to be bound by the terms of the scheme of arrangement.

THE INSTANT SECOND DEFENDANT'S APPLICATION UNDER O 14A OF THE RULES OF COURT 2012

**[16]** It seems that the first defendant was wound up in Companies (Winding-Up) Petition No BKI-28NCC-10/1 of 2018 (see note of proceedings on 24 September 2018) presented in the High Court at Kota Kinabalu.

**[17]** Thus, in this action, directions were given for trial of the action only as between the plaintiff and the second defendant.

**[18]** On 17 March 2019, the second defendant took out this instant application which the second defendant framed the following issues to be determined under O 14A of the Rules of Court 2012:

(a) whether the plaintiff has been deemed to have irrevocably, unconditionally and permanently waived its rights to its present claim, based on the construction of the scheme of arrangement dated 9 September 2009 as amended by the addendum dated 28 September 2009 and as sanctioned with alterations pursuant to the brief grounds by the Court of Appeal of the Republic of Singapore on 13 October 2010 ('the second defendant's existing scheme'), including without limitation, cl 6.5.2 of the second defendant's existing scheme, on the basis that the plaintiff's contingent claim did not crystalised by the fifth anniversary of the effective date (19 April 2010) of the second defendant's existing scheme; and;

(b) whether the plaintiff's submission of the proof of debts dated 25 September 2009 pursuant to the second defendant's existing scheme crystalised the plaintiff's contingent claim under the banking facilities.

**[19]** Order 14A of the Rules of Court 2012 provides that:

1 Determination of questions of law or construction (O 14A r 1)

(1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:

(a) such question is suitable for determination without the full trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

(2) On such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

(4) The jurisdiction of the Court under this Order may be exercised by a Registrar.

(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19 or any other provisions of these Rules.

**[20]** Before the court proceeds to determine any issues, whether they are question of law or construction of any document, as framed by the second defendant, it is for the second defendant to satisfy the court not only that these issues are suitable for determination without the full trial of the action but also that the determination of such issues will finally determine the entire cause or matter and if not, any claim or issue therein (see *Dato' Sivananthan a/l Shanmugam v Artisan Fokus Sdn Bhd* [2016] 3 MLJ 122; [2015] 2 CLJ 1062).

**[21]** In *Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31 Federal Court Justice, Abdull Hamid Embong FCJ held that:

[36] It is well settled that an issue is only suitable for determination under O 14A if the points of law to be determined thereunder have been stated in clear and precise terms and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination which would be final as to the entire cause or matter (see *Allen v Gulf Oil Refining Ltd* [1980] QB 156 and *Seloga Sdn Bhd v UEM Gynisys Sdn Bhd* [2007] 7 MLJ 385; [2008] 2 CLJ 686 ). *The trial judge is therefore vested with the discretion to rely on the pleadings or to rely on affidavit evidence before him to determine whether the matter is suitable for determination without full trial of the action* (see *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd*).

**[22]** The issues are suitable for determination under O 14A of the Rules of Court 2012 when all facts material to the issues are admitted or not disputed. The court is not to proceed to determine the issues on assumed facts.

**[23]** It is not a requirement that the determination should dispose of the whole case. It is sufficient if it would dispose of the major part of the case or the dominant issue in the case. The mere fact that the case appears to be or is complicated is no justification not to consider the application. See *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8 and *Malaysian Civil Procedure*, Vol 1 — 2018 Ed, para 14A/1/6.

A ANALYSIS OF THE ISSUES ARISING FROM THE PLEADINGS AND AFFIDAVITS AND ISSUES FRAMED BY THE SECOND DEFENDANT IN THE APPLICATION

B **[24]** The issues framed by the second defendant were based on the assumption that the plaintiff is bound by the scheme of arrangement as approved by the court in the Republic of Singapore. I do not think that is right.

C **[25]** Upon perusal of the pleadings and the affidavits as filed, it appears that there is no serious dispute in respect of the provisions of the scheme of arrangement as approved by the court in the Republic Singapore.

D **[26]** However, contrary to the contentions of counsel for the second defendant, based pleadings and the affidavit as filed, the plaintiff's case is that the scheme of arrangement is not valid and binding on the plaintiff. There was representation by the plaintiff notwithstanding the scheme of arrangement, that corporate guarantee was still legally valid and binding on the second defendant. The plaintiff has denied it has elected to be bound by the scheme of arrangement.

E See paras 2A to 5 of the plaintiff's amended statement of reply to the second defendant's re-amended statement of defence (encl 83) read with paras 4A to 8 of the second defendant's re-amended defence (encl 81).

F **[27]** Thus, in respect of the issue of liability of the second defendant under the corporate guarantees, I find the proper and main issues arising from the pleadings and affidavits as filed are:

G (a) whether the plaintiff is bound by the scheme of arrangement and provisions therein which is the dependant on the determination of underlying issues:

(i) whether the scheme of arrangement approved by the court in the Republic Singapore discharged the second defendant's obligations and liabilities under the corporate guarantees given by the second defendant to the plaintiff (which is a question of law); and

H (ii) whether there was a legal enforceable agreement or contract between the plaintiff and the second defendant for the plaintiff to be bound by the scheme of arrangement (which is a mixed question of fact and law).

I (b) Even if the scheme of arrangement is binding on the plaintiff, whether there was representation by the second defendant that notwithstanding the scheme of arrangement, the corporate guarantees remained valid and enforceable which the plaintiff has acted to its detriment that the second should be held to the representation.

**[28]** Before the issues as framed by the second defendant in this application can be determined, the aforesaid issues in respect of whether the plaintiff is bound by the scheme of arrangement have to be determined first and cannot be assumed.

**[29]** In respect of the scheme of arrangement approved by the court in the Republic Singapore, it takes effect by reason of the order of the court in the Republic of Singapore approving the scheme, rather than by mutual consensual agreement. See *Bond Corporation Holdings Ltd v Western Australia (No 2)* (1992) 10 ACLC 715 at p 719; (1992) 7 WAR 61 at p 67.

**[30]** The discharge of the second defendant's debts to all creditors as provided and under the scheme of arrangement takes effect by the operation of the legislation or law applicable in the Republic of Singapore. Can it, a foreign legislation operates to discharge the debts or liability of the corporate guarantees given by the second defendant in Sabah, Malaysia? I do not think so.

**[31]** Clause 28 of all the three corporate guarantees given by the second defendant to the plaintiff provide that they shall be governed by and construed in accordance with the laws of Malaysia. See exh 'TPJ-3', 'TPJ-4' and 'TPJ-5' of encl 64.

**[32]** The proper law of contract in respect of these corporate guarantees given by the second defendant to the plaintiff is the law of Malaysia. The liabilities and debts arising thereunder cannot be discharged by a foreign laws, in this case the laws of the Republic of Singapore.

**[33]** In *New Zealand Loan and Mercantile Agency Co v Morrison* [1898] AC 349, the respondent in that case placed money on deposit in Victoria, Australia with the appellant, a company incorporated in England and carrying on business in Victoria, Australia. The High Court in England later sanctioned a scheme of arrangement under the English Joint Stock Companies Arrangement Act 1870 and declared it binding on all creditors. Thereafter, the respondent commenced an action in Victoria to recover her deposit. By its defence, the appellant raised the scheme of arrangement.

**[34]** In that case, the Judicial Committee of the Privy Council held that the scheme of arrangement sanctioned by an English court was a proceeding in a foreign court and cannot be pleaded in a Victorian court as a defence to an action by a non-assenting Victorian creditor for the full amount of her claim.

**[35]** Similarly, in *Global Distressed Alpha Fund 1 Limited Partnership v PT Bakrie Investindo* [2011] 2 BCLC 275, the defendant was incorporated in Indonesia as an investment holding company. It raised finance through debt by

the issue of guaranteed notes. The notes were issued by a Dutch company owned by the defendant. They were guaranteed by the defendant. The guarantee and the notes were subject to English law. The notes were not, however, paid on their maturity date. A debt reorganisation composition plan was accepted by a majority of the defendant's creditors and was ratified by the Indonesian court. Under the Indonesian composition plan, the defendant's obligations under the guarantee of the notes were discharged.

**[36]** Subsequently, in that case, the claimant bought some of the notes amounting to US$2m, from a prior holder. It brought proceedings against the defendant before the English court, relying on the guarantee. The commercial court of the Queen's Bench Division, United Kingdom held that it was bound by the established case law and held that the discharge of the defendant's obligations as guarantor as a matter of Indonesian law was of no effect in English law, which was the governing law of the guarantee.

See also *Antony Gibbs & Sons v LA Societe Industrielle Et Commerciale Des Metaux* (1890) 25 QBD 399 and *National Bank of Greece and Athens SA v Metliss* [1957] 3 All ER 608.

**[37]** It seems that the second defendant's liability to the plaintiff under the corporate guarantees given here in respect of the banking facilities cannot be discharged by the scheme of arrangement in the Republic of Singapore.

**[38]** In respect of the issue whether the scheme of arrangement constituted a legal enforceable agreement or contract binding on the plaintiff, though the plaintiff did file its proofs of debt with the scheme manager but the proof was rejected. The plaintiff has never voted or got the chance to vote in the meeting of the creditors of the second defendant in Singapore for the scheme of arrangement.

**[39]** Based on the affidavits, at this stage, I do not find any evidence clearly established the fact of an offer made by the second defendant, acceptance by the plaintiff of such offer and consideration as required under the Contracts Act 1950 to give rise to an enforceable agreement or contract that the plaintiff should be bound by the scheme of arrangement.

**[40]** In respect of the issue of representation by the second defendant that notwithstanding the scheme of arrangement, the corporate guarantees should remain valid and enforceable and whether the plaintiff has acted to its detriment, I find it arguable that the second defendant did make such representation based on the second defendant's letter dated 31 May 2017 which stated that the corporate guarantee remained valid, binding and sufficient to secure the banking facilities and seeking for the plaintiff to allow

the first defendant to continue instalment repayment and not imposing requirement of additional security. See exh 'TBP-1' of encl 69.

**[41]** There is the issue of whether the plaintiff had indeed relied on such representation to its detriment. There is a further issue whether the plaintiff and the second defendant had agreed to the execution and giving of a fresh corporate guarantees to be given by the second defendant and whether non-execution of such corporate guarantee was due to default of the second defendant or the plaintiff. See also exhs 'TPJ-17', 'TPJ-18', 'TPJ-19' and 'TPJ-20' of encl 71.

**[42]** The affidavit evidence relating these issues seems to be conflicting.

**[43]** In the premises, I am not persuaded that the two issues as framed by the second defendant for determination in this application are suitable for determination without the full trial of the action and that the determination of such issues will finally determine the entire cause or matter or if not, any claim or issue therein. They are not the dominant or core issues.

PRONOUNCEMENT AND ORDERS

**[44]** For the reasons heretofore, I therefore dismiss the second defendant's notice of application dated 27 March 2019 (encl 63).

**[45]** I award the plaintiff a sum of RM2,000 as costs of the application subject to and with allocatur fee.

*Application dismissed with costs of RM2,000 subject to allocator fee.*

Reported by Izzat Fauzan